



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FOP - 203617

PRELIMINARY RECITALS

Pursuant to a petition filed on November 4, 2021, under Wis. Admin. Code §HA 3.03, to review a decision by the Racine County Department of Human Services (the agency) regarding FoodShare benefits (FS), a hearing was held on January 13, 2022, by telephone.

The issue for determination is whether the agency has met its burden to show that petitioner was overissued FS.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED], Program Integrity Specialist
Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. Petitioner received FS from at least April 2, 2015 through September 25 2021 for herself and her children.

3. Petitioner has three children in common with [REDACTED]. They were married on May 13, 2017.
4. In August 2021, the FS agency received information that [REDACTED] was living with petitioner and commenced an investigation.
5. By a series of notices dated October 29, 2021, the agency informed petitioner that she was overpaid FS: Claim # [REDACTED] references the period of 10/1/15-9/30/16 in the amount of \$6132 due to client error for failing to report accurate household members; Claim # [REDACTED] references the period of 10/1/16-12/31/16 in the amount of \$1533 due to client error in failing to report accurate household members; Claim # [REDACTED] references the period of 6/1/17-11/30/17 in the amount of \$3188 due to client error in failing to report accurate household members; Claim # [REDACTED] references the period of 12/4/17-5/31/18 in the amount of \$3778 due to client error in failing to report accurate household members; Claim # [REDACTED] references the period of 12/19/18-11/30/19 in the amount of \$4129 due to client error in failing to report accurate household members; Claim # [REDACTED] references the period of 12/1/19-1/31/20 in the amount of \$524 due to client error in failing to report accurate household members; Claim # [REDACTED] references the period of 8/10/20-12/31/20 in the amount of \$3332 due to client error in failing to report accurate household members; Claim # [REDACTED] references the period of 7/1/21-9/30/21 in the amount of \$2040 due to client error in failing to report accurate household members.

DISCUSSION

The agency is required to recover all overpayments of public assistance benefits. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(a). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2). The agency asserts that petitioner was overpaid FS because her husband was living with her and his income should have been included in the household budget. Parents and their children must be included in the FS household if they are living together. 7 C.F.R. §273.1(a)(2). All nonexempt income in a household must be budgeted against the FS income limits. 7 C.F.R. §273.9(b).

The agency presented the investigator and his report of that investigation, which included statements from petitioner's former landlord. The agency also presented a sheriff's deputy to testify regarding a traffic stop wherein [REDACTED] was questioned regarding his residence, which was stated to be the same address as petitioner. The remainder of the agency's evidence which was offered to show [REDACTED] lived with petitioner consisted of documents from various sources that show the petitioner's husband's address as the same as petitioner's address. Those documents included a lease where [REDACTED] signed as the guarantor, a promissory note, court records, motor vehicle crash reports, a traffic citation, DOT information, a sheriff's call report, child support address history, unemployment benefits records, and [REDACTED] details.

The problem with the agency's case is that it is all hearsay. "Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered into evidence to prove the truth of the matter asserted." Wis. Stat. §908.02(3). "A 'statement' is (a) an oral or written assertion...of a person, if it is intended by him as an assertion." Wis. Stat. §908.01(1). Although hearsay is admissible in administrative hearings, Wisconsin courts have long held that agencies may never base findings solely upon uncorroborated hearsay. Our Supreme Court recently vigorously reaffirmed this position in *Gehin v. Wisconsin Group Insurance Board*. 2005 WI 16, a decision that overturned a finding based upon untestified-to medical records that were contradicted by petitioner's sworn testimony.

For administrative hearings, the standard of proof is preponderance of the evidence. Also, in a hearing concerning the propriety of an overpayment determination, the agency has the burden of proof to establish that the action taken was proper given the facts of the case. The petitioner must then rebut the agency's case and establish facts sufficient to overcome the agency's evidence of correct action.

Petitioner rebutted the agency's case through the testimony from her husband that he was not residing with her during the entirety of the overpayment periods. He admits he is in her home at times as they have children in common but that their relationship is rocky and he has been spending nights at friends/coworkers or in his car. The child support records (KIDS) show his address as petitioner's but is designated as "mail". The court records from [REDACTED] indicate that the parties stated on that record that they were living separately and [REDACTED] used petitioner's address for mailing purposes during that child support action in 2019. The lease presented by the agency only lists [REDACTED] as a guarantor - and not a tenant - and the promissory note confirms that he was "on the hook" as that guarantor. [REDACTED]'s testimony was consistent with those documents. The fact that numerous records show his address as petitioner's does not show me that he was actually living there during the entirety of the overpayment periods. I agree the agency had legitimate suspicions about his residence. However, there is no direct evidence which can allow me to conclude he was residing there for all of the times alleged. Petitioner's husband agreed they lived together when they moved to Burlington in August 2016 and they remained there together through July 2017. That testimony is the only nonhearsay corroborating evidence of his residence with petitioner.

Based on the evidence presented, I cannot conclude that the agency has met its burden of proof in establishing that petitioner's husband lived with her during the entirety of the overpayment periods. What has been confirmed is that overpayments exist for the periods of August 2016 - July 2017.

Based on all of the foregoing, I will direct rescission of the overpayments, with the exception of the periods of August 2016 - July 2017. The agency will need to establish the claim for that period (August 2016 - July 2017) with a new notice of FS overpayment and corrected worksheet to the petitioner.

The petitioner is reminded here that she can arrange to make repayments on the new overpayment claim, which can usually be arranged with the Public Assistance Collection Unit (PACU). I understand that the PACU attempts to make those payments affordable and that repayments can also be made by having a percentage of any current FS recouped instead of making outright cash payments.

CONCLUSIONS OF LAW

1. The agency has not met its burden of proof to establish an overpayment of FS against the petitioner in FS overpayment Claim # [REDACTED], Claim # [REDACTED], Claim # [REDACTED], Claim # [REDACTED], Claim # [REDACTED], Claim # [REDACTED], Claim # [REDACTED], and Claim # [REDACTED].
2. The agency has established an overpayment of FS for the period of August 2016 - July 2017.

THEREFORE, it is

ORDERED

That the matter is remanded to the agency with instructions to rescind FS overissuance Claim # [REDACTED], Claim # [REDACTED], Claim # [REDACTED], Claim # [REDACTED], Claim # [REDACTED], Claim # [REDACTED], Claim # [REDACTED], and Claim # [REDACTED], and to cease all collection or recovery activities based upon the claims, had such collections begun. The agency shall also establish a new claim for the period of August 2016 - July 2017 with a new notice of FS overpayment and corrected worksheet to the petitioner. These actions shall be completed within 10 days of the date of this Decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way 5th Floor, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

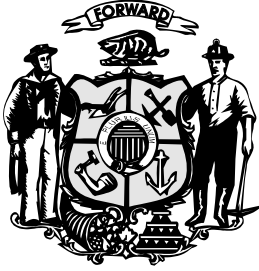
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 20th day of January, 2022

\s _____
Kelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 20, 2022.

Racine County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability